IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED	STATES	OF	AMERICA,

Plaintiff

v.

Yomar Hernandez-Maldonado,

Defendant

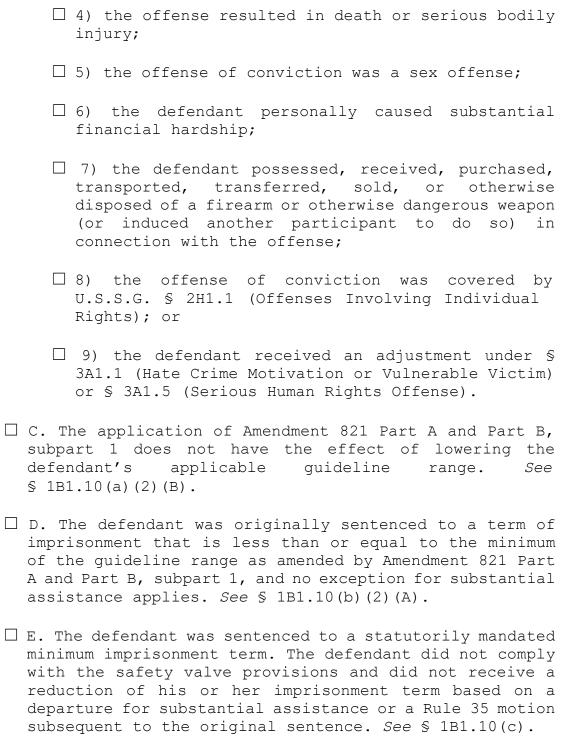
Criminal No. 18-cr-13-1 (DRD)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

\square The defendant is <u>not</u> eligible for a sentence reduction base on the following factor(s):
☐ A. The guidelines range that applied in the defendant' case was not determined by U.S.S.G. § 4A1.1(d) defendant's status as a zero-point offender under Chapter 4, Part A.
\square B. The defendant does not meet <u>all</u> of condition specified by § 4C1.1. Specifically, one or more of the following criteria applies:
\square 1) the defendant has criminal history points from Chapter Four, Part A;
<pre>D 2) the defendant received an adjustment unde U.S.S.G. § 3A1.4 (Terrorism);</pre>
\square 3) the defendant used violence or credible threat of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or *pro bono*, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection

by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

 □ The defendant may be eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons: Defendant received a mandatory minimum sentence of sixty months for Count I (firearm possession in violation of 18 U.S.C. § 924(c)(1)(A)(i)). Dkt. 51 at 5:11-22. Pursuant to U.S.S.G. § 4A1.1(d), he was sentenced to an additional thirty months to run consecutively for Count II (possession with intent to distribute a Schedule II narcotic controlled substance in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C)). Id.

Defendant's total offense level for Count II was 17. *Id.* Further, during sentencing for this offense, he was placed in criminal history category III because he had five criminal history points, two of which resulted from his arrest for this offense while on supervised release. *Id.*; Dkt. 42 (PSR) at 10 ¶ 41. Applying Amendment 821, Defendant would not have received these two points. Thus, he would receive three criminal history points placing him in criminal history category II. Under criminal history category III, Defendant's offense in Count II warranted a sentence ranging from 30 to 37 months. But under criminal history category II, his offense in Count II would warrant a sentence ranging from 27 to 33 months.

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I note that Defendant admitted to possessing a firearm in connection with his offense in Count II. Dkt. 35 (plea agreement) at 10. However, that admission does not affect his eligibility for a reduction of his Count II sentence based on the recalculation of his criminal history.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 12th day of December, 2023.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge